

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-149869-09
Date: April 21, 2010

LEGEND

X =

A =

I =

Y =

Z =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter dated November 9, 2009, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1. X made an election to be treated as an S corporation effective Date 1. Prior to Date 2, A and I, an electing small business trust (ESBT), owned all the stock of X. On Date 2, I transferred its X stock to Y, an ineligible shareholder. Consequently, X's S corporation election terminated on Date 2. On Date 3, Z acquired all the stock of X pursuant to a

stock purchase agreement that required Z and the shareholders of X to make an election under § 338(h)(10).

On Form 8023, Elections Under Section 338 for Corporations Making Qualified Stock Purchases, A, I, Y and Z consented to the election. All parties to the sale of X to Z filed their federal income tax returns consistent with a valid 338(h)(10) election, treated the transfer of X stock from I to Y as null and void, and treated A and I as the selling shareholders of X.

X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election on Date 2 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 2 through Date 3 provided X's S corporation election was otherwise valid and provided that the election was not otherwise terminated under § 1361(d). During the period Date 2 through Date 3, I is treated as the shareholder of X with respect to its shares of X stock transferred to Y.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, we express no opinion regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, we express no opinion regarding whether I qualified as an ESBT.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Melissa C. Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes